

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO**

DINÉ CITIZENS AGAINST RUINING
OUR ENVIRONMENT, *et al.*;

Plaintiffs,

VS.

DAVID BERNHARDT, *et al.*;

Defendants.

No. 1:19-cv-00703-WPJ-JFR

**INTERVENOR NAVAJO ALLOTTEES' MOTION FOR INTERVENTION OF
ADDITIONAL, SIMILARLY SITUATED ALLOTTEES**

On August 22, 2019, the Court granted the unopposed intervention of Delora Hesuse, Alice Benally, Lilly Comanche, Virginia Harrison, Samuel Harrison, Verna Martinez, Lois Phoenix, and Mabel C. Senger (collectively, “Intervenor Navajo Allottees”). (Doc. 50). As described in their Motion to Intervene (Doc. 23), there are hundreds of Navajo Nation citizens who own mineral rights currently in production or approved for production by the United States Department of the Interior. Intervenor Navajo Allottees have kept the Court apprised of their intent to join additional allottees in support of Defendants, following community meetings. (Doc. 48, 64). On August 22, 2019, the Court issued an order granting the Navajo Allottees’ Motion to Intervene. (Doc. 50).

Pursuant to Federal Rule of Civil Procedure 24, Intervenor Navajo Allottees hereby move to intervene as of right pursuant to Rule 24(a)¹ or, alternatively, permissively under Rule 24(b),² for the admission of 196 similarly situated allottees identified herein as additional Interveners in the present action. These 196 additional Navajo allottees are similarly situated to the eight Intervenor Navajo Allottees in that their sole or primary source of income—flowing from the ongoing development of their allotted minerals—is at serious risk in this litigation. The injunctive relief Plaintiffs request would be calamitous for the Intervenor Navajo Allottees and for the additional, proposed Interveners, who have all executed notarized affidavits attesting to the

¹ A judge must allow intervention under Fed. R. Civ. P. 24(a)(2) when the proposed intervenor (1) has an interest relating to the property or transaction underlying the case whose (2) rights would be impeded or impaired by disposition of the case and (3) whose rights are inadequately represented by the existing parties. This is not a “mechanical rule” with “rigid, technical requirements.” *San Juan Cnty., Utah v. U.S.*, 503 F.3d 1163, 1195 (10th Cir. 2007) (en banc). Efficiency and fairness dictate that a movant should be allowed to intervene if it will be substantially affected by the outcome. *Id.* at 1195 (citing Fed. R. Civ. P. 24 advisory committee’s note (1966 Am.)). Accordingly, courts are “somewhat liberal” in allowing intervention as a matter of right, *WildEarth Guardians v. Nat’l Park Serv.*, 604 F.3d 1192, 1198 (10th Cir. 2010); *Nat’l Farm Lines v. Interstate Commerce Comm’n*, 564 F.2d 381, 384 (10th Cir. 1977), because the Rule’s elements for intervention as a matter of right are flexible, practical, interdependent, and heavily fact-specific. *San Juan Cnty.*, 503 F.3d at 1195-1196 (citing 6 James Wm. Moore et al., *Moore’s Federal Practice* § 24.03[1][b], at 24-25 (3d ed. 2006)). The right to retain control over one’s own lands and to ensure the continued economic security of individual Navajo families in the Chaco Canyon area are compelling interests.

² In the alternative, the Navajo Allottees also believe permissive intervention for the 196 additional Navajo allottees is warranted pursuant to Rule 24(b)(2). Rule 24(b)(2) is broad and “construed liberally in favor of intervention.” *Utah Ass’n of Counties v. Clinton*, 255 F.3d 1246, 1249 (10th Cir. 2001). The rule requires intervenors to share some common “claim or defense” with the main action. As more fully explained within their individual affidavits, each of the 196 Intervenor Navajo allottees is seriously threatened by Plaintiffs’ requested relief, which undermines the economic opportunity afforded to them by their allotted mineral rights.

substantial harms presented to them by Plaintiffs' requested injunctive relief. The identification of the additional 196 similarly situated allottees is detailed in the table below.

ADDITIONAL ALLOTTEES		
	Last Name	First Name
1.	Alfred	Alberta
2.	Anderson	Retta
3.	Armstrong	Jerry
4.	Atencio	Caroline
5.	Atencio	James
6.	Atencio	Leon
7.	Atencio	Nina
8.	Atencio	Pauline
9.	Atencio	Rosie
10.	Atencio	Rosita
11.	Atencio	Ruth
12.	Augustine Jr.	John
13.	Augustine Sr.	Freddie
14.	Augustine	Irene
15.	Baker	Elouise
16.	Baker	Norma L.
17.	Becenti	Elvira
18.	Becenti	Wilbert
19.	Begay	Grace N.
20.	Begay	Ida M.
21.	Begay	Johnny
22.	Begay	Leroy
23.	Benally	Elovonne J.
24.	Benally	Jean M.
25.	Betselie	Helen M.
26.	Beyale	Andrew L.
27.	Beyale	Andy
28.	Beyale	Clarence
29.	Beyale	Rickie
30.	Bia	Darlene
31.	Bitsilly	Eddie
32.	Bitsilly	Jane
33.	Blueyes	Lydia
34.	Brown	Patterson

ADDITIONAL ALLOTTEES		
	Last Name	First Name
35.	Brown	Sadie
36.	Buck	Bertha L.
37.	Bunny	Thomas
38.	Canuto	Janie
39.	Canuto	Van W.
40.	Cayaditto	Arleen
41.	Cayaditto	Elvis
42.	Cayaditto	Marie
43.	Charley	Andrew
44.	Charley	Cora
45.	Charley	David
46.	Charley	Lula R.
47.	Charley	Woodrow M.
48.	Chavez	Andrew
49.	Chavez, Jr.	Chester
50.	Chavez	Elizabeth W.
51.	Chavez-Herbert	Marie
52.	Clah	Camella Rose
53.	Cly	Bessie
54.	Comanche	Tom Y.
55.	Commanche	Dolly A.
56.	Commanche	Helen M.
57.	Commanche	Thomas
58.	Dennison	Denny
59.	Domingo	Royce
60.	Eldridge	Rebecca
61.	Escobedo	Corlina
62.	Etcitty	Alice
63.	Etcitty	Priscilla
64.	Frank	Eugene
65.	Frank	Susan
66.	Frank	Trisha
67.	Gracie	Matilda R.
68.	George	Lucy M.
69.	Gould	Clara M.
70.	Guerito	Dorothy
71.	Guerito	Tom
72.	Haceessa	Ella M.

ADDITIONAL ALLOTTEES		
	Last Name	First Name
73.	Hacessa	Arnold C.
74.	Harrison	Geraldine
75.	Harrison	Hattie G.
76.	Harrison	Leta R.
77.	Harrison	Mary J.
78.	Harrison	Pauline
79.	Harrison	Ramus
80.	Harrison	Susan
81.	Harrison, Sr.	Steven
82.	Harvey	Earl
83.	Harvey	Gibson
84.	Harvey	Jane D.
85.	Harvey	Victoria
86.	Herrera	Harriett
87.	Herrera	Rita C.
88.	Herrera	William
89.	Hesuse	Calvin A.
90.	Howard	Carol Ann
91.	Jaquez	Juanita M.
92.	Jim	Carl
93.	Jim	Raymond
94.	Jim-Pine	Mary
95.	Joe	Virg
96.	John	Janie
97.	Johnson	Arlene
98.	Jose	Leo
99.	Jose	Lorette
100.	Keeto	Dorothy
101.	Keetso	Betty
102.	Keetso	Woody
103.	King	Joyce Loraine
104.	Largo	Alfred
105.	Largo	Danny D.
106.	Largo	Esther
107.	Largo	Eva Y.
108.	Largo	Lucy
109.	Largo	Steven
110.	Largo	Teddy Roger

ADDITIONAL ALLOTTEES		
	Last Name	First Name
111.	Largo Jr.	Tommy
112.	Larvingo	Letta J.
113.	Larvingo	Nancy
114.	Lee	Titus
115.	Lente	Betty L.
116.	Lewis	Rosie A.
117.	Lopez	Albert
118.	Lopez	Cornelia M.
119.	Lopez	Evelyn C.
120.	Lopez	Gary
121.	Lopez	Hernandez
122.	Lopez	Howard
123.	Lopez	Joann C.
124.	Lopez	Rita
125.	Lopez	Ted
126.	Manuelito	Esther C.
127.	Manygoats	Mary B.
128.	Martin	Robert
129.	Martinez	Ann B.
130.	Martinez	Anna C.
131.	Martinez	Emma A.
132.	Martinez	Harold A.
133.	Martinez	Ronnie
134.	Martinez	Willie J.
135.	Monarco	Mary Ann
136.	Morgan	Elowine C.
137.	Myerson	Laverne
138.	Norberto	Bessie B.
139.	Norberto	Gloria A.
140.	Norberto	Lorraine
141.	Norberto	Nelson Robert
142.	Pacheco	Bessie
143.	Pacheco	Harold
144.	Pacheco Kenneth	Eva M.
145.	Palacios	Nancy
146.	Pete	Jennie
147.	Pine	Harold T.
148.	Pioche	Mary Lou

ADDITIONAL ALLOTTEES		
	Last Name	First Name
149.	Platero	Danny
150.	Platero	Rita
151.	Royston	La-Vonne
152.	Sala	Edith
153.	Sala	Leo
154.	Sam	Arlo
155.	Sam, Sr.	Harold
156.	Sanchez	Harry
157.	Sanchez	Rose Marie
158.	Sandoval	Aurelia
159.	Sandoval	Bert G.
160.	Sandoval	Henry
161.	Sandoval	Louis Y.
162.	Selz	Betty
163.	Smith	Arnold
164.	Smith	Harold
165.	Sylvester	Lucy J.
166.	Tahe	Matilda
167.	Thomas	Anita
168.	Thompson	Celestine
169.	Thompson	Mary
170.	Toledo	Louise V.
171.	Thomas	Esther
172.	Trujillo	Nelson
173.	Tsinniginnie	Ruby D.
174.	Tso	Stanley
175.	Tsosie	Ethelina
176.	Valdez	Anna
177.	Valdez	Jessie
178.	Valdez	Johnny H.
179.	Valdez	Paul
180.	Watson	Mary H.
181.	Werito	Clifford
182.	Werito	David E.
183.	Werito	Louis Y.
184.	Werito	Roger Sr.
185.	Whitehorse	Martha
186.	Willie	Linda A.

ADDITIONAL ALLOTTEES		
	Last Name	First Name
187.	Willie	Robert J.
188.	Wilson	Antonio
189.	Wilson	Dorothy V.
190.	Wilson	Etta W.
191.	Yazzie	Bennie T.
192.	Yazzie	Betty L.
193.	Yazzie	Betty N.
194.	Yazzie	Emerson C.
195.	Yazzie	Kee
196.	Yazzie	Loni Sage

As their individual affidavits demonstrate, all of the 196 additional allottees are threatened by Plaintiffs' requested relief, which could effectively deprive them of their sole or primary means of subsistence. There is substantial factual and legal overlap among the issues presented by all Intervenor Navajo Allottees. Indeed, these Navajo Nation citizens own allotted minerals that are either currently in production or permitted for production pursuant to the decisions Plaintiffs challenge in the instant lawsuit. The intervention of these additional allottees will not cause any undue prejudice as the litigation is still in its infancy. Moreover, all parties have been on notice that the Navajo Allottees intended to join additional intervenors.

All 196 additional allottees submit, concurrent with this motion, their affidavits in opposition to Plaintiffs' Motions for Temporary Restraining Order and Preliminary Injunction, detailing serious economic harms that will befall them if the injunctive relief is granted. In addition, four of the original eight Intervenor—Lilly Comanche, Virginia Harrison, Verna Martinez and Loyce Phoenix—are concurrently submitting their affidavits in opposition to Plaintiffs' Motions for Temporary Restraining Order and Preliminary Injunction.

The New Mexico portion of the Navajo Nation (“Nation”) – a region referred to since 1907 as the Navajo Eastern Agency – is among the poorest and least developed parts of the state. The practical effect of Plaintiff’s lawsuit is to undermine or obliterate the primary – and, in many instances, exclusive – source of expected income for the 196 allottees whose declarations are now before the Court. These Navajo (or *Diné*) own mineral rights in one of the most economically depressed areas of the Nation.

How and why the Navajo Allottees – and the 196 similarly situated *Diné* who seek to join them as Intervenor – originally came to own these mineral rights also bears on the severity of the economic harm they face because of this lawsuit. These lands, and the minerals beneath their surface, were not part of the original Navajo Indian Reservation (“Reservation”) created by the Treaty of 1868 with the United States. Instead, this section of the Navajo Eastern Agency was added to the Reservation by Presidential executive order on Nov. 9, 1907. However, after intense lobbying by non-Indian ranching and railroad interests, these same lands were withdrawn from the Reservation and restored to the Federal public domain by executive orders issued on December 30, 1908 and January 16, 1911, respectively. Tragically, some Navajo families living near Chaco on former Reservation lands later received allotments, while others did not. Peter Iverson: *Diné: A History of the Navajos* 133 (University of New Mexico Press, 2002).

This portion of the San Juan Basin has been under oil and gas development for more than 60 years. Subsequently, when legislation creating the current Chaco Culture National Historic Park was enacted in 1980, Congress carefully affirmed and protected “the valid existing rights of private property owners,” including the rights of these and other allottees, to develop their allotments through oil and gas production. 16 U.S.C. Section 410ii(a). Congress appropriately

recognized that most of the area is too arid for farming and has only very limited grazing potential. Continued oil and gas development remains the only viable economic activity. For these 196 individuals, it is an economic necessity.

For the foregoing reasons, the Navajo Allottees move to intervene as of right pursuant to Rule 24(a) or, alternatively, permissively under Rule 24(b) for the intervention of the 196 similarly situated allottees identified herein.

Pursuant to D.N.M.LR-Civ. 7.1(a), the undersigned has conferred with counsel for all parties and states that this Motion is opposed by Plaintiffs.

Respectfully submitted,

GREENBERG TRAURIG

s/ Troy A. Eid

Troy A. Eid, D. N.M. Bar No. 19-166

Jennifer H. Weddle, D. N.M. Bar No. 19-163

Matthew Crockett

Francesca Ciliberti-Ayres

1144 15th Street, Suite 3300

Denver, Colorado 80202

Phone: (303) 572-6521

Fax: (303) 572-6540

eidt@gtlaw.com

CERTIFICATE OF SERVICE

I hereby certify that on the 6th day of November 2019, I filed the foregoing electronically through the CM/ECF system, which caused the following parties or counsel to be served by electronic means, as more fully reflected on the Notice of Electronic Filing.

s/ Troy A. Eid

<p>Kyle Tisdell Julia Guarino WESTERN ENVIRONMENTAL LAW CENTER tisdell@westernlaw.org guarino@westernlaw.org</p> <p>Daniel Timmons Samantha Ruscavage-Barz WILDEARTH GUARDIANS dtimmons@wildearthguardians.org sruscavagebarz@wildearthguardians.org</p> <p>Karimah Schoenhut SIERRA CLUB karimah.schoenhut@sierraclub.org</p> <p><i>Attorneys for Plaintiffs</i></p>	<p>Hadassah M. Reimer John Frederick Shepherd Robert J Sutphin Kristina R. Van Bockern HOLLAND & HART LLP hmreimer@hollandhart.com jshepherd@hollandhart.com rsutphin@hollandhart.com trvanbockern@hollandhart.com</p> <p><i>Attorneys for Intervenor BP America Production Co. & DJR Energy Holding, LLC</i></p>
<p>Christopher F. Jeu Andrew A Smith Corinne Virginia Snow U.S. ATTORNEY'S OFFICE christopher.jeu@usdoj.gov andrew.smith@usdoj.gov corinne.snow@usdoj.gov</p> <p><i>Attorneys for Defendants</i></p>	<p>Jens Jensen James M Noble Keith D. Tooley Rebecca W. Watson WELBORN SULLIVAN MECK & TOOLEY jjensen@wsmtlaw.com jnoble@wsmtlaw.com ktooley@wsmtlaw.com rwatson@wsmtlaw.com</p> <p><i>Attorneys for Intervenor Enduring Resources IV, LLC</i></p>
<p>Bradley Ervin Steven Rosenbaum COVINGTON & BURLING, LLP bervin@cov.com srosenbaum@cov.com</p> <p>John J. Indall MALDEGEN, TEMPLEMAN & INDALL, LLP jindall@cmtisantafe.com</p> <p><i>Attorneys for Intervenor Defendant American Petroleum Institute</i></p>	